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SUBJECT: UNIVERSAL PERIODIC REVIEW: UN'S NEW HUMAN RIGHTS
MECHANISM UNDERGOING BIRTH PAINS

REF: 07 GENEVA 2541

Classified By: A/DCM David Gilmour. Reasons: 1.4 (b/d).

11. (C) SUMMARY: The Universal Periodic Review (UPR), the UN's newest human rights mechanism, remains set to get underway in April, but concerns are emerging that many unresolved issues involving its modalities might lead to a delay. Already, countries of the African Group and others have blocked agreement over the selection and roles of "troikas," which are to facilitate each review, and this has resulted in a delay in troika selection. Other issues that were left vague in planning for UPR, including what kind of outcome the reviews will produce, could also become a subject of dispute, producing delays in UPR start-up or shifting attention from the substance of reviews to their procedures. Word that reviews will be webcast, contrary to earlier information, is good news. Hopes remain high that UPR will start on time and prove at least moderately effective in addressing human rights situations, but for the moment, much attention centers on the mechanism's birthing pains. END SUMMARY

A NEW MECHANISM, WITH MANY GROUND RULES NOT YET SET

12. (SBU) As we described previously, UPR was among the key innovations of the recently formed UN Human Rights Council. (Reftel offered an overview of the UPR process.) It provided a mechanism by which every UN member state's overall human rights performance would undergo a review once in a four-year cycle, with 48 countries reviewed each year. The first tranche of reviews for 2008 are scheduled to begin in April, with a second tranche in May and a third in December. (Embassies in countries scheduled for review in the first three tranches are listed as info addressees on this and reftel cable.)

13. (SBU) Although the original guidelines and "roadmap" offered much information on modalities, they left many issues unanswered. That fact was acknowledged but seen as inevitable in a process being started from scratch. Thus, an informal consensus formed to get the reviews underway, with details of the procedures to be established as the process

unfolds.

THE "TROIKA" CONTROVERSY

14. (SBU) That consensus already has been disrupted over the selection and role of the three troika members, each representing a Council member state, who are to facilitate each review. The immediate dispute centers on the selection process, which is to be done by lottery. To give countries flexibility, the roadmap established that the country under review may request the substitution of one of the selected troika members, and that a country eligible to become a troika member may opt out of any troika. The dispute emerged over how to carry this out in practice. The Office of the High Commissioner for Human Rights (OHCHR) insisted that the selection process, including the substitution and opting out, be conducted in public, in full view of the Council, to ensure transparency; OHCHR officials told us they did not want to be accused of manipulating troika selection to any country's advantage or disadvantage. The African Group, by contrast, put emphasis on confidentiality, saying that forcing a country publicly to exercise its right either of substitution or of opting out would be politically difficult; a country chosen to serve on a troika, for instance, might find it politically inexpedient to say publicly that it did not want to take on that role. A practical way could seemingly be found to resolve the differences, and Council President Doru Costea has been working hard to do so.

15. (SBU) Although details about selection are the main subject of negotiation, an underlying dispute centers on the roles troikas should play. With the guidelines open to

interpretation, African Group countries argue that troikas' roles should be clearly and narrowly defined for the sake of fairness. According to those countries, it would be unfair for one troika to play a pro-active and aggressive role, generating its own difficult questions to the country under review, while a troika in another review plays a more passive role, merely collecting questions and input from others. Similarly, they argue, one troika should not be allowed to draw its own sweeping conclusions about a country at the end of the review session, while another troika simply collates the questions and recommendations of others. As one African diplomat commented to us, troika members must not be allowed to act with the independence of Special Rapporteurs.

16. (C) Negotiations have been ongoing, but have produced little progress, a well-connected OHCHR staffer told us. Many observers believed that the African Group and its allies sought to delay troika selection to ensure that troika members were not given enough time to perform more than a limited role in the UPR process. That explanation still seems likely. The OHCHR staffer noted, however, that the African Group's position has become more intractable, raising concerns that the real motivation is to postpone the April and May tranches.

OTHER ISSUES FOR DEBATE

17. (SBU) Although attention currently centers on the selection process, many other issues remain to be worked out. Among the most important is the preparation of the report that will emerge from each review. Although the roadmap laid out general categories of information to be included in each report, questions remain whether the report will contain a pro forma presentation or be more selective, perhaps highlighting or downplaying some conclusions or recommendations. It remains unclear who will prepare the report -- the troika, OHCHR staff, or perhaps the Council President and his staff -- but whoever is given that task would be placed under huge pressure from both supporters and critics of the concerned country, as well as NGOs and others pressing for a focus on a particular issue.

18. (C) The assumption remains that the nature of the report

will be hashed out as UPR reviews take place, with debates during review sessions no doubt having a major impact. Some countries, however, may seek to work out at least some of the key modalities ahead of time, possibly during the March regular session of the Council.

GEARING UP FOR THE FIRST SET OF REVIEWS

¶9. (SBU) Meanwhile, the 16 countries to be reviewed in April and May are working on the input they are to provide by their February 28 deadline. Several have expressed uncertainty about what is expected of them; a Zambian diplomat told us her government had asked her to approach OHCHR with numerous questions, to which she was getting limited responses. Many delegations are hopeful that sessions on UPR preparation will provide many answers; the first of these, for francophone countries, is to take place in Rabat in early February.

¶10. (SBU) For its part, OHCHR is preparing the summaries of information from treaty body reports, special procedures and other official UN documents that it is to provide, by February 24, on each of the countries in the first tranche. The OHCHR staffer said that his organization was feeling the strain as that deadline approaches, but that funding for seventeen new positions devoted to UPR would make things far more manageable, and ensure good quality reports, in the future.

REVIEWS TO BE WEBCAST

¶11. (C) Among the issues debated as UPR took shape was

whether reviews should be conducted by working groups or in Council plenary sessions. Because Council working groups are not webcast, countries reluctant to give broad publicity to reviews favored that option, which won out. OHCHR staffers have told us, however, that though conducted by working groups, reviews are to be webcast, with voluntary funding already in hand to cover the first tranches. The staffers were quick to add that they have not advertised the prospects for webcasting since they hoped to avoid sparking new controversy among those who may still believe it will not take place.

COMMENT

¶12. (C) The stalemate over troika selection modalities is discouraging and appears to signal, at minimum, an attempt by some countries to limit the role of troikas. The argument, that troikas should have clear ground rules to ensure equal treatment for all countries under review, makes some sense but also seems motivated by a desire to limit the focus of reviews, thus making them less of a threat to human rights violators. We can expect similar debate over other unresolved issues, and the continued precedence of procedure over the substance of human rights concerns could get the UPR process off to a slow start. Delaying the April start date for reviews, which may occur if the troika debate is not resolved, would also be a setback to UPR, although it would be far from fatal to the process.

¶13. (C) Indeed, hopes remain high that UPR will prove at least moderately effective as a human rights mechanism. The fact that reviews are to be webcast will allow the comments of the international community to be quickly and widely disseminated, and UPR will also provide a useful forum to highlight human rights best practices. We believe, then, that the USG will be able to use UPR to advance USG human rights goals. Septel will offer some ideas on how to do so.

TICHENOR